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GLOBAL ACQUISITIONS NETWORK,) Case No. CV 12-08758 DDP (CWx)
a Wyoming corporation; SHAWN)
CORNEILLE, an individual,)
)
Plaintiffs,)
)
)
v.) [Dkt. No. 104]
)
)
BANK OF AMERICA CORPORATION,)
a Delaware corporation;)
ORIANA CAPITAL PARTNERS,LLC,)
a Connecticut limited)
liability company; et al.)
)
)
Defendants.)
)

Presently before the Court is Defendant Jon Leary's motion to set aside entry of default (the "Motion"). For the following reasons, the Motion is GRANTED.

I. Background

Plaintiffs Global Acquisitions Network and Shawn Corneille ("Plaintiffs") filed this action against multiple defendants, alleging breach of contract and related causes of action. (FAC, Docket No. 48.) Following the filing of the First Amended Complaint

1 in March 2013, Defendant Bank of America filed a motion to dismiss
2 the action against them, which the Court granted on June 7, 2013.
3 (Docket No. 60.) Defendant Jon Leary then filed a motion to dismiss
4 based on lack of personal jurisdiction, which the Court denied on
5 July 9, 2013. (Docket No. 68.) Plaintiffs then proceeded to seek
6 entry of default against several defendants in a piecemeal fashion.
7 Default was entered against Leary on August 6, 2013. (Docket No.
8 79.)

9 Leary, proceeding pro se, now seeks to set aside the entry of
10 default. (Docket No. 104.) Leary explains that he attempted to file
11 an answer in early August. (Id.) Leary also alleges that he has
12 bona fide defenses to the allegations in the FAC and that he had
13 little to no involvement in the matters pled therein. (Id.) Leary
14 further contends that Plaintiffs have not been prejudiced by the
15 delay. (Id.)

16 **II. Legal Standard**

17 Once default has been entered, the defaulting party has the
18 burden of showing that default should be set aside. Cassidy v.
19 Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988). The defaulting party
20 must show that good cause exists for setting aside the default.
21 Fed. R. Civ. Prov. 55(c). In determining whether good cause exists,
22 the court may consider the following factors: (1) whether the
23 defaulting party has a meritorious defense; (2) prejudice to the
24 plaintiff if default is set aside; and (3) the defaulting party's
25 culpability in allowing default to occur. Mendoza v. Wight Vineyard
26 Mgmt., 783 F.2d 941, 946 (9th Cir. 1986).

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1 **III. Discussion**

2 Leary alleges that he had "little to no involvement in the
3 matters as hand." (Motion, Docket No. 104, p. 2.) While the merits
4 of this assertion remain to be seen, the Court is persuaded that
5 Leary's argument may have merit. Therefore, a resolution of the
6 case on the merits is preferable to allowing default to stand.
7 Further, the prejudice that Plaintiffs will suffer is minimal.
8 Plaintiffs are still in the process of seeking entry of default
9 and/or default judgment against various other Defendants in this
10 case. With substantial other activity occurring in this case,
11 Plaintiffs will not suffer prejudice, other than actually having to
12 prove their claims against Leary rather than collect by way of
13 default judgment.


14 Leary also offers an excuse for his default because he alleges
15 that he tried to file an answer to Plaintiffs' FAC in August but
16 was unsuccessful. Because Leary is self-represented and appears to
17 reside in Connecticut, filing documents in the Central District of
18 California and checking whether they have been properly filed may
19 be challenging for Leary. As a result, the Court does not believe
20 that Leary is highly culpable in allowing default to occur.

21 **IV. Conclusion**

22 For the foregoing reasons, the Court GRANTS the Motion. The
23 entry of default against Leary is set aside.

24 IT IS SO ORDERED.

25
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27 Dated: December 17, 2013

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DEAN D. PREGERSON
United States District Judge